

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

CARLOS HENRY DAVIS,

Petitioner,

v.

CASE NO. 5:07-12470

HONORABLE JOHN CORBETT O'MEARA

JERI-ANN SHERRY,

Respondent.

ORDER DISMISSING HABEAS PETITION AS DUPLICATIVE

Petitioner Carlos Henry Davis has filed a *pro se* habeas corpus petition under 28 U.S.C. § 2254. Four days before Petitioner filed his habeas petition in this District, he filed a similar habeas petition in the Western District of Michigan. *See Davis v. Sherry*, No. 2:07-cv-00106 (W.D. Mich. June 4, 2007). Both habeas petitions challenge the same 2004 convictions for assault with intent to do great bodily harm less than murder, felon in possession of a firearm, and possession of a firearm during the commission of a felony.

“As between federal district courts, . . . though no precise rule [concerning the contemporaneous exercise of concurrent jurisdiction] has evolved, the general principle is to avoid duplicative litigation.” *Colo. River Water Conservation Dist. v. United States*, 424 U.S. 800, 817, 96 S.Ct. 1236, 47 L.Ed.2d 483 (1976) (citing *Kerotest Mfg. Co. v. C-O-Two Fire Equip. Co.*, 342 U.S. 180, 183, 72 S.Ct. 219, 96 L.Ed. 200 (1952)). Faced with a duplicative suit, the federal court may exercise its discretion to stay or dismiss the suit before it, allow both federal cases to proceed, or enjoin the parties from proceeding in the other suit. *Smith v. SEC*, 129 F.3d 356, 361 (6th Cir. 1997).

“[S]imple dismissal of the second suit is [a] common disposition because plaintiffs have no right to maintain two actions on the same subject in the same court, against the same defendant at the same time.” *Curtis v. Citibank, N.A.*, 226 F.3d 133, 138-39 (2d Cir. 2000); *see also Missouri v. Prudential Health Care Plan, Inc.*, 259 F.3d 949, 953-54 (8th Cir. 2001) (joining other courts that have

held a district court may dismiss one of two identical pending actions).

Twaddle v. Diem, 200 Fed. Appx. 435, 438, 2006 WL 2817538 at **3 (6th Cir. Sept. 29, 2006) (unpublished opinion) (alterations in original); *see also Piedra v. Aguirre*, 125 Fed. Appx. 968, 969, 2005 WL 705369 at **1 (10th Cir. March 29, 2005) (unpublished opinion stating that “[a] district court, as part of its general power to administer its docket, ‘may stay or dismiss a case that is duplicative of another federal court suit’”) (quoting *Curtis v. Citibank, N.A.*, 226 F.3d 133, 138 (2d Cir. 2000)).

Petitioner’s habeas petition is duplicative of the habeas petition now pending in the Western District of Michigan. Accordingly, this action is DISMISSED.

s/John Corbett O’Meara
United States District Judge

Dated: July 5, 2007

I hereby certify that a copy of the foregoing document was mailed to Carlos Davis on this date, July 5, 2007, by ordinary mail.

s/William Barkholz
Case Manager